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Federal Communications Commission

DA 97-2748

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Columbia City, Florida)

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MM Docket No. 97-252
RM-9206

NOTICE OF PROPOSED RULE MAKING

Adopted: December 17, 1997

Released: January 9, 1998

Comment Date: March 2, 1998

Reply Date: March 17, 1998

By the Chief, Allocations Branch

1. Before the Commission for consideration is a petition for rule making filed by Max Media ("Max") proposing the allotment of Channel 243A at Columbia City, Florida, as that community's first local FM broadcast service. Max indicated that it would file an application for Channel 243A at Columbia City if the channel is allotted to the community.

2. Section 307(b) of the Communications Act of 1934, as amended, requires that the Commission allot channels "...among the several states and communities." The Commission has defined "communities" as geographically identifiable population groupings. Generally, if a community is incorporated or listed in the U.S. Census, that is sufficient to satisfy its status. Absent such recognizable community factors, the petitioner must present the Commission with sufficient information to demonstrate that such a place has social, economic, or cultural indicia to qualify it as a community for allotment purposes. See e.g., Oak Grove, FL, 5 FCC Rcd 3774 (1990); Hannibal, OH, 5 FCC Rcd 3315 (1990); and Statenville, GA, 5 FCC Rcd 2685 (1990). Here, Columbia City is an unincorporated community in Columbia County. We find that although Columbia City can be located on a map, it is not listed in the U. S. Census and it does not have a local post office or zip code. In support of its proposal, Max has stated that official highway signs identify Columbia City when approached from both the north and the south on State Route 47 and that it appears that approximately 100 single homes are in the area. Max continues that the Columbia City Elementary School is located on Route 47, there are four churches in the community and that there is a Columbia City Volunteer Fire Department. According to Max, commercial businesses in the community include two large modern convenience stores, a beauty shop and a cabinet/woodworking factory. However, we may find

that the above information does not constitute a community for allotment purposes where the community may be devoid of the customary factors associated with determining community status, such as a library, shopping centers, community churches, a newspaper and social or civic organizations. See e.g., Searles Valley, CA, 3 FCC Rcd 5221 (1900); see also Naples, FL, 41 RR ed 1549 (1977). In past cases, we have rejected claims of community status where a nexus has not been shown between the political, social and commercial organizations and the community in question. Therefore, Max is requested to present the Commission with specific information to demonstrate that Columbia City has the social, economic and governmental indicia to qualify it as a "community" for allotment purposes. See Gretna, Marianna, Quincy and Tallahassee, FL, 6 FCC Rcd 633 (1991) and cases cited therein. Although Max has indicated there are some businesses, churches and a school in Columbia City, it has not identified those entities with addresses or shown that they are intended to serve residents of Columbia City as opposed to other areas. Max should show that the organizations, civic groups, churches, schools, police, etc., have a nexus with Columbia City.

3. A staff engineering analysis indicates that Channel 243A can be allotted to Columbia City consistent with the minimum distance separation requirements of the Commission's Rules without a site restriction.¹

4. In view of the fact that the proposed allotment would provide a first local service to Columbia City, the Commission believes it would serve the public interest to solicit comments on the proposal to allot Channel 243A to Columbia City, in the event it is ultimately found to qualify as a community for allotment purposes. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Columbia City, as follows:

Community	Channel No.	
	Present	Proposed
Columbia City, Florida	----	243A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **March 2, 1998**, and reply comments on or before **March 17, 1998**, and are advised to read the Appendix for the proper procedures. Comments should

¹ The coordinates for Channel 243A at Columbia City are 30-04-12 and 82-41-42.

be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

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P. O. Box 19351
Washington, D. C. 20036

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission, Washington, D, C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D. C.